Clearwater Sprinkler System, Inc. *and* United Association of Sprinkler Fitters, Local 536 a/w United Association of Plumbers and Pipefitters, AFL-CIO. Cases 5-CA–30527, 5-CA–30581, 5-CA–30612, and 5–CA–30788

September 30, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA, AND MEMBERS LIEBMAN AND WALSH

The General Counsel seeks default judgments[1] in these cases on the grounds that the Respondent has failed to file an answer to the complaints.

Upon charges filed by the Union in Cases 5-CA–30527, 5–CA–30581, and 5–CA–30612, the General Counsel issued an "Order Consolidating Cases, Consolidated Complaint and Notice of Hearing" on September 30, 2002,[2] in which he alleged that the Respondent committed several violations of Section 8(a)(1), (3), and (5) of the National Labor Relations Act (the Act). The General Counsel contends that the Respondent did not submit a sufficient answer to this complaint. Upon the filing of a charge by the Union in Case 5–CA–30788, the General Counsel issued an Order Consolidating Cases, Complaint, and Notice of Rescheduled Hearing on December 10, in which he alleged that the Respondent committed additional violations of Section 8(a)(3) and (5) of the Act.[3] The General Counsel contends that the Respondent also did not submit a sufficient answer to this complaint.

On December 30, the Respondent submitted a letter to the Region, stating:

> We have been in the process of bargaining in good faith with the union. We are also meeting with them again on January 15, 2002 [sic]. We feel that there will be no need for a formal hearing and that all the issues will be resolved once a contract has been signed.

On January 17, 2003, the General Counsel filed a Motion for Summary Judgment with the Board, moving for summary judgment on each separate complaint. On January 22, 2003, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On February 10, 2003, the Respondent filed a letter response, with supporting affidavits, to the Notice to Show Cause.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. Both the September and December complaints affirmatively state that, unless an answer is filed within 14 days of service, all the allegations in those respective complaints will be considered admitted. Further, the undisputed allegations in the motion disclose that the Region, by letter dated December 3, notified the Respondent that, unless an answer to the first complaint was received by December 17, a motion for summary judgment would be filed. The undisputed allegations in the motion also disclose that the Region, by letter dated December 24, notified the Respondent that, unless an answer to the second complaint was received by January 7, 2003, a motion for summary judgment would be filed.

The Respondent is apparently proceeding without legal representation. We recognize that, when determining whether to grant motions for default judgment, the Board has shown some leniency toward respondents who proceed without benefit of counsel. *Kenco Electric & Signs*, 325 NLRB 1118 (1998). Thus, the Board will generally not preclude a determination on the merits of a complaint if it finds that a pro se respondent has filed a timely answer, which can reasonably be construed as denying the substance of the complaint allegations. *Harborview Electric Construction Co.*, 315 NLRB 301 (1994). "Similarly, where a pro se respondent fails to file a timely answer, but provides a 'good cause' explanation for such failure, default judgment will not be entered against it on procedural grounds." *Patrician Assisted Living Facility*, 339 NLRB No. 149, slip op. at 1 (2003).

As stated above, on December 30, the Respondent submitted a letter (quoted in full above) to the Regional Office. And, as noted above, on February 10, 2003, the Respondent submitted a response to the Board's Notice to Show Cause why the General Counsel's motion for

[1] The General Counsel's motion requests summary judgment on the ground that the Respondent has failed to file an answer to the complaints. Accordingly, we construe the General Counsel's motion as a motion for default judgment.

[2] All dates refer to 2002 unless noted otherwise.

[3] The September complaint was consolidated with the December complaint. In this regard, the first paragraph of the December complaint states in pertinent part as follows:

> Upon charges filed in Cases 5-CA-30527, 5-CA-30581 and 5-CA-30612…an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing issued on September 30, 2002; and the Union has charged [unfair labor practices] in Case 5-CA-30788 . . . Based thereon, the General Counsel . . . ORDERS that these cases are consolidated.

summary judgment should not be granted. That letter transmitted to the Board copies of precomplaint investigative affidavits obtained by the Board from the Respondent's officials. The letter states:

> Please see the attached affidavits in reference to the above cases which were done by [the Board agent investigating the unfair labor practice charges]. We have no further information to provide at this time. We have been working with the union and meeting regularly to try and come to a final contract.

Under the Board's rules, the Respondent's letters and submitted affidavits are not sufficient answers to the complaints. The letters completely fail to address the substance of any of the 8(a)(1) and (3) allegations in the complaints, or the 8(a)(5) refusal to provide information allegation. While the Respondent's December 2002 and February 2003 letters assert that it was, at the time of those letters, "in the process of bargaining in good faith with the union," meeting with the union on January 15, and "working with the union and meeting regularly to try [to] come to a final contract," these assertions do not, even at a minimum, address the alleged refusal to bargain starting in June 2002.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

JURISDICTION

At all material times, the Respondent, a Maryland corporation with an office and place of business in Baltimore, Maryland, has been engaged in the business of installing sprinkler systems for fire protection. During the 12-month period preceding issuance of the December complaint, the Respondent, in conducting its operations described above, purchased and received at its Baltimore, Maryland facility goods valued in excess of $50,000 directly from points located outside the State of Maryland.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act.

F. Michael Morgan-President

Patrick Snyder-Superintendent

At all material times, Desiree Dunigan has held the position of bookkeeper and office manager, and has been an agent of the Respondent within the meaning of Section 2(13) of the Act.

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time sprinkler fitters and helpers and sprinkler fitter/truck drivers employed by the Respondent at its Baltimore, Maryland facility, excluding all office clerical employees, guards, professional employees, and supervisors as defined in the Act.

On June 17, the Union was certified as the exclusive collective-bargaining representative of the unit. At all times since June 17, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

On or about March 26, the Respondent, by F. Michael Morgan, interrogated employees about whether they had been talking to the Union; and, at the MICA jobsite, told employees he would not let the Respondent go union, threatened employees he would "close the f****** doors" if the Union came in, and interrogated employees about whether the union organizer had been coming around.

On or about April 4, the Respondent, by F. Michael Morgan, in a telephone conversation, interrogated employees about whether anyone had asked employees at the MICA jobsite to sign union cards; and, on or about May 24, at its Baltimore facility, in the presence of employees, told the union organizer he would not shake his hand if he were dying in the street, and told him to "get a f****** real job."

On or about April 5, the Respondent, by Patrick Snyder, at the MICA jobsite, told employees he knew they had been signing union cards and threatened that Morgan would find out who had signed union cards; and threatened employees that Morgan would close up the business if the Union came in; and, in or around April 2002, warned employees not to talk to John Warehime and Eugene Snyder because they were Union.

Through these above-mentioned actions of its supervisor and agent F. Michael Morgan and supervisor and agent Patrick Snyder, the Respondent has interfered with, restrained and coerced employees in the exercise of the

rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

On or about May 28, Respondent ceased providing transportation for employee Jesse Wilson; and on or about June 7, the Respondent terminated him. On or about July 8, the Respondent terminated employee Eugene Snyder. On or about September 24, the Respondent discriminatorily selected employee Edrick Artis for layoff, and laid him off.

The Respondent ceased providing transportation for Jesse Wilson, terminated Wilson and Eugene Snyder, and discriminatorily selected for layoff and laid off Edrick Artis in violation of Section 8(a)(3) of the Act, because these employees joined, supported, or assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

On or about June 18, the Union, by letter, requested that the Respondent bargain collectively with it as the exclusive collective-bargaining representative of the unit. Since about June 19, the Respondent has failed and refused to bargain with the Union as the exclusive collective-bargaining representative of the unit.

On or about September 6, the Union, by letter, requested the Respondent to furnish the Union with the following information:

> (a) a copy of current personnel policies, procedures, and practices whether oral or written;
>
> (b) a copy of all company fringe benefit plans including pension, profit sharing, severance, vacation, health and welfare, apprenticeship, training, legal services, child care, or any other plans which relate to bargaining unit employees;
>
> (c) a copy of all disciplinary notices, warnings or records of disciplinary personnel actions for the last year; and
>
> (d) a copy of any attendance policies which were in existence during the last five years but which are no longer in effect or have been modified.

The information requested by the Union is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

Since about September 6, the Respondent has failed and refused to furnish the Union with the requested information.

By refusing to bargain with the Union and refusing to provide information necessary for and relevant to the Union's performance of its function as the exclusive collective-bargaining representative of the employees in the unit, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of employees within the meaning of Section 8(d) of the Act in violation of Section 8(a)(5) and (1) if the Act.

CONCLUSIONS OF LAW

By the acts and conduct described above, the Respondent has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed them by Section 7 of the Act, in violation of Section 8(a)(1) of the Act. By ceasing to provide transportation for employee Jesse Wilson; by terminating Wilson and employee Eugene Snyder; and by discriminatorily selecting for layoff and laying off employee Edrick Artis, the Respondent has discriminated in regard to hire or tenure or terms and conditions of employment of employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(3) and (1) of the Act. In addition, by failing and refusing to bargain with the Union as the exclusive collective-bargaining representative of the unit, and by failing to provide the Union with information necessary for and relevant to the Union's performance of its function as the exclusive collective-bargaining representative of the employees in the unit, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) in violation of Section 8(a)(5) and (1) of the Act.

The unfair labor practices affect commerce within the meaning of Sections 8(d), 8(a)(1), (3), and (5) and 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Specifically, having found that the Respondent has violated Section 8(a)(3) and (1) by terminating Jesse Wilson and Eugene Snyder, and discriminatorily selecting for layoff and laying off Edrick Artis, we shall order the Respondent to offer these individuals full reinstatement to their former jobs, or if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F.W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to remove from its files any and all references to the unlawful terminations of Jesse Wilson

and Eugene Snyder and the discriminatory selection for layoff and layoff of Edrick Artis, and to notify them in writing that this has been done.

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union with the information requested on or about September 6.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning on the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817; *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Clearwater Sprinkler System, Inc., Baltimore, Maryland, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Coercively interrogating any employee about union support or union activities.

(b) Telling employees it would not let the Respondent go Union.

(c) Telling the union organizer it would not shake his hand if he were dying in the street and to get a real job.

(d) Telling employees it knew they had been signing union cards and threatening that it would find out who had signed union cards.

(e) Threatening employees that it would close up the business if the Union came in.

(f) Warning employees not to talk to employees or other individuals because they were Union.

(g) Refusing to provide transportation for employees because employees joined, supported, or assisted the Union and engaged in concerted activities.

(h) Terminating or otherwise discriminating against any employee for supporting United Association of Sprinkler Fitters Local 536 a/w United Association of Plumbers and Pipefitter, AFL–CIO or any other labor organization.

(i) Selecting for lay off, laying off, or otherwise discriminating against our employees for supporting United Association of Sprinkler Fitters, Local 536 a/w United Association of Plumbers and Pipefitters, AFL–CIO or any other labor organization.

(j) Failing and refusing to bargain with United Association of Sprinkler Fitters, Local 536 a/w United Association of Plumbers and Pipefitters, AFL–CIO, as the exclusive bargaining representative of employees in the appropriate unit.

(k) Failing and refusing to provide the Union with information that is relevant and necessary to the performance of its duties as the exclusive bargaining representative of employees in the unit.

(l) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Jesse Wilson, Eugene Snyder, and Edrick Artis full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed.

(b) Make Jesse Wilson, Eugene Snyder, and Edrick Artis whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files any and all references to the unlawful terminations of Jesse Wilson and Euugene Snyder, and the discriminatory selection for layoff and layoff of Edrick Artis, and within 3 days thereafter notify them in writing that this has been done, and that the unlawful conduct will not be used against them in any way.

(d) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All full-time and regular part-time sprinkler fitters and helpers and sprinkler fitter/truck drivers employed by Respondent at its Baltimore, Maryland facility, excluding all office clerical employees, guards, professional employees, and supervisors as defined in the Act.

(e) Furnish to the Union in a timely manner the information requested by the Union on or about September 6, 2002: a copy of current personnel policies, procedures, and practices, whether oral or written; a copy of all company fringe benefit plans including pension, profit sharing, severance, vacation, health and welfare, apprenticeship, training, legal services, child care, or any other plans which relate to bargaining unit employees; a copy

of all disciplinary notices, warnings, or records of disciplinary personnel actions for the last year; and a copy of any attendance policies which were in existence during the last 5 years but which are no longer in effect or have been modified.

(f) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(g) Within 14 days after service by the Region, post at its facility in Baltimore, Maryland, copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in this proceeding, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 26, 2002.

(h) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., September 30, 2003

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT coercively question you about your union support or activities.

WE WILL NOT tell employees we will not let our company go Union.

WE WILL NOT tell the union organizer that we will not shake his hand if he were dying in the street and to get a real job.

WE WILL NOT tell employees we knew they had been signing union cards and threatening that we would find out who had signed union cards.

WE WILL NOT threaten employees that we will close up our business if the Union came in.

WE WILL NOT warn employees not to talk to certain employees because they are Union.

WE WILL NOT refuse to provide transportation for employees because they join, support or assist the Union and engaged in protected concerted activities.

WE WILL NOT terminate or otherwise discriminate against any of you for supporting the Union or any other labor organization.

WE WILL NOT select for layoff, actually lay off or otherwise discriminate against any of you for supporting the Union or any other labor organization.

WE WILL NOT fail and refuse to bargain with the Union as the exclusive bargaining representative of employees in the unit.

WE WILL NOT fail and refuse to provide the Union with information that is relevant and necessary to the performance of its duties as the exclusive bargaining representative of employees in the unit.

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Jesse Wilson, Eugene Snyder, and Edrick Artis full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL, within 14 days from the date of the Board's Order, make Jesse Wilson, Eugene Snyder, and Edrick Artis whole for any loss of earnings and other benefits they suffered as a result of the unlawful discrimination against them, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any and all references to the unlawful terminations of Jesse Wilson and Eugene Snyder, and the discriminatory selection for layoff and layoff of Edrick Artis, and WE WILL, within 3 days thereafter, notify them in writing that this has been done, and that the unlawful conduct will not be used against them in any way.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

> All full-time and regular part-time sprinkler fitters and helpers and sprinkler fitter/truck drivers employed by the Respondent at its Baltimore, Maryland facility, excluding all office clerical employees, guards, professional employees, and supervisors as defined in the Act.

WE WILL furnish the Union the information it requested on September 6, 2002.

CLEARWATER SPRINKLER SYSTEM, INC.